DETAILED ACTION

Interference

1. Applicant has suggested an interference pursuant to 37 CFR 41.202(a) in a communication filed August 21, 2006.

Applicant failed to (1) identify all claims the applicant believes interfere, and/or (2) propose one or more counts, and/or (3) show how the claims correspond to one or more counts. See 37 CFR 41.202(a)(2) and MPEP § 2304.02(b).

In reviewing the suggested interference, the applicants have not fulfilled 37CFR 41.203. It states the following:

(a) Interfering subject matter. An interference exists if the subject matter of a claim of one party would, if prior art, have anticipated or rendered obvious the subject matter of a claim of the opposing party and vice versa.

Base on the above, the claims in this application 09/251,988 would not render obvious over the claims of U.S. Patent 6,033,935. Therefore, the suggested interference is hereby denied.

Furthermore, In MPEP 2301.03, it states: "A claim of one inventor can be said to interfere with the claim of another inventor if they each have a patentable claim to the same invention. The Office practice and the case law define "same invention" to mean patentably indistinct inventions. Case v. CPC Int 'l, Inc., 730 F.2d 745, 750, 221 USPQ 196, 200 (Fed. Cir. 1984); Aelony v. Arni, 547 F.2d 566, 570, 192 USPQ 486, 489-90 (CCPA 1977); Nitz v. Ehrenreich, 537 F.2d 539, 543, 190 USPQ 413, 416 (CCPA 1976); Ex parte Card, 1904 C.D. 383, 384-85 (Comm'r Pats. 1904). If the claimed invention of either party is patentably distinct from the claimed invention of the other party, then there is no interference-in-fact. Nitz v.

Ehrenreich, 537 F.2d 539, 543, 190 USPQ 413, 416 (CCPA 1976). 37 CFR 41.203(a) states the test in terms of the familiar concepts of obviousness and anticipation. Accord Eli Lilly & Co. v. Bd. of Regents of the Univ. of Wa., 334 F.3d 1264, 1269-70, 67 USPQ2d 1161, 1164-65 (Fed. Cir. 2003) (affirming the Office's interpretive rule). Identical language in claims does not guarantee that they are drawn to the same invention. Every claim must be construed in light of the application in which it appears. 37 CFR 41.200(b). Claims reciting means-plus-function limitations, in particular, might have different scopes depending on the corresponding structure described in the written description." Keep also in mind that 37 CFR 41.203 states: "(a) Interfering subject matter. An interference exists if the subject matter of a claim of one party would, if prior art, have anticipated or rendered obvious the subject matter of a claim of the opposing party and vice versa."

Base on the above statement, the examiner believes that there is no interference between the claims of the present invention and claims 1-3 of U.S. Patent 6,033,935 since they do not have a patentable claim to the same invention nor is it obvious to use the above patent taken alone or in combination with another reference. Further, the filing date of the above patent will not qualified for any 102 or 103 rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermele M. Hollington whose telephone number is (571) 272-1960. The examiner can normally be reached on M-F (9:00-4:00 EST) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ha Nguyen can be reached on (571) 272-1678. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jermele M. Hollington/
Primary Examiner
Art Unit 2829

/J. M. H./
December 17, 2009